

County of San Diego - Negotiated Work Plan FY 2007/08

Program Resources

PROGRAM STAFF

Currently, staffing for County of San Diego Pesticide Regulation Program (PRP) consists of twelve full-time inspectors. During Fiscal Year 2007/08, one additional position was added to the program with county funding. Five of the inspectors are bilingual, and all are licensed to perform pesticide inspections. With the additional position, the program will still have two fewer inspector positions than in 2000 due to lack of funding, which results in fewer inspections being performed. Two supervising inspectors and one deputy agricultural commissioner oversee the program, and four clerks provide support. Several staff members have over 15 years of experience in pesticide regulation.

PRP staff is distributed primarily by geographic area, but some inspectors work county-wide on specific issues. This includes one position assigned to licensing issues, including inspection of pest control businesses and associated complaints; one position assigned full-time to structural pest control; and one position assigned to schools and government agencies. Three positions perform structural pest control part-time, and when added to the full-time position, provide the equivalent of two structural positions.

COMMUNITY

San Diego is a diverse community consisting of a large urban area with a population of approximately three million, an international border with Mexico, military installations and a farming community of over 6,000 farms. San Diego ranks 8th in crop production value in the State of California, and agriculture is San Diego's 5th leading economic sector. Local growers produce high value crops such as nursery products and avocados on land mostly interspersed with residential and other sensitive sites.

It is estimated that approximately 12,000 farm workers are employed in San Diego during the height of the growing season. This work force is primarily employed directly by growers, but some workers are employed through the 36 registered farm labor contractors working in the County. Farm worker housing is limited, contributing to pesticide regulation compliance concerns related to clean work clothing, showers and decontamination. Some farm workers occupy makeshift camps with limited resources, especially potable water and water for sanitation.

Most of San Diego's farms are small, family-owned operations with fewer than nine acres. On-farm employees handle most pest control decisions and applications.

Pesticide applications generate calls and concerns from area residents, especially when aerial applications are conducted. The combination of agricultural/urban interface and overall population growth has resulted in an increase in pesticide-related complaints by neighbors of farms, and neighbor vs. neighbor complaints of misuse. Approximately 60 such complaints were received last year. This is in addition to the illness investigations forwarded from the Department of Pesticide Regulation (DPR), which are primarily pesticide injuries associated with antimicrobial use by hospitals, janitorial services and restaurants.

In addition to agricultural/urban interface issues, San Diego has a large structural pest control industry. More than 200 structural pest control companies are registered in San Diego, typically conducting between 18,000 and 20,000 fumigations annually. San Diego also has a significant landscaping industry. These two industries account for the majority of urban pesticide applications, other than applications by homeowners.

Restricted Materials Permitting

PERMIT-EVALUATION

Approximately 1,000 restricted materials permits are issued each year in San Diego County; 950 permits are agricultural and 50 are non-agricultural. Roughly 90% of the permits are issued to the operator of the property, with the majority of those permits issued for only one to three chemicals.

San Diego staff has reduced the number of chemicals per permit over the last 10 years by reviewing permits annually and by talking with growers about their need for certain chemicals and suggesting alternatives. This interaction, combined with the availability of lower toxicity pesticides, has led to an overall decrease in the number of restricted materials used.

Due to the continued urbanization of San Diego County, the permits that are issued need to accurately reflect sensitive sites (surrounding homes, businesses, schools, hospitals or habitat) that may be affected by the applications. Therefore, permits are evaluated only after direct observation of the site.

SPECIFIC PERMIT ISSUES

Field fumigant use is limited to north county row crop operations and smaller (measured by square feet) applications for soil fumigation in ornamental plant production. The eventual phase-out of Methyl Bromide has led to the use of alternative materials such as Telone, In Line and Metam Sodium. Permit mitigation is conducted on a site-by-site basis.

At the discretion of the Commissioner and in consideration of local conditions and hazards, a permit can be required for the use of any pesticide. In San Diego

County the use of Agri-Mek (a thripicide) by aerial application was restricted in 2005. This material is used in avocado groves and due to the terrain, is applied primarily by air. Prior to 2005, Agri-Mek was a restricted use material that was applied under a Section 18 label. In 2006, Agri-Mek was labeled for use in California, but remained a federally restricted material. Complaints and drift concerns led the Commissioner to retain the permit requirement indefinitely. The Notice of Intent requirement for Agri-Mek is very helpful to the commissioner's office in quickly identifying the application site and contacting the responsible pesticide applicators when drift complaints are received. The close proximity of homes and schools to many avocado groves, and the placement of many homes inside groves, leads to several complaints every year.

SITE MONITORING

San Diego County currently conducts pre-application site inspections on five percent of Notices of Intent (NOIs). To address areas with potentially greater hazards and/or a greater potential for complaints, priority will be given to areas where field fumigation or aerial applications will be conducted. Priority will also be given to applications at sensitive sites.

Goal

Ensure that at least five percent of NOIs for restricted materials are reviewed prior to application to determine compliance with permit requirements.

Ensure that for all restricted material permits issued to persons other than the property operator, a letter from the property operator is on file authorizing the permit to be signed by the non-operator.

Deliverables

1. Conduct presite monitoring of at least 5% of total NOIs received, with emphasis placed on fumigation, aerial and sensitive site applications.
2. Develop an Authorized Representative Designation form for use with permits that informs each party of their responsibilities.

Measures

Pre-application site inspections enable County personnel to monitor the site at which a restricted material will be used for any changes that may have occurred since the permit was issued. Pre-application site inspections also provide an opportunity to confirm that permit conditions are being followed. In choosing to give emphasis to aerial applications, fumigations and sensitive sites, the County is focusing available resources on applications with the highest potential for non-compliance and potential complaints from area residents.

Compliance Monitoring

The County of San Diego normally conducts 1,100 to 1,500 pesticide inspections per year. Last year, the proposed number of inspections was reduced to 900 as the responsibility for writing Notices of Proposed Action (NOPAs) was added to the program workload. This year, with the additional position, the proposed number of inspections is 1,000. (See attachment for details on inspection numbers by type.) This number may need adjustment during the year depending on the number of complaints and illness investigations received.

Approximately one-third of the program workload is related to structural pest control. Every attempt is made to balance the workload so that urban concerns are addressed and agricultural worker health and safety goals are met. Inspections are usually prioritized based on types of materials used (higher toxicity fumigants and restricted materials), frequency of applications, number of workers, past history and complaints.

The County has the equivalent of two positions allotted to structural pest control. With so few hours available, it is necessary to distribute those hours to provide the most effective compliance monitoring possible. PRP staff will continue to inspect fumigation aeration activities by Branch 1 companies. This is part of an ongoing compliance issue this County identified five years ago: Branch 1 companies conduct aeration correctly when fumigations are monitored, but sometimes fail to follow regulations in the perceived absence of an inspector. This monitoring program will also be influenced by new, more stringent aeration procedures, requiring structures to be cleared to 1 ppm fumigant or less.

Undercover inspections are planned for 20 fumigation companies based in San Diego County.

The County will work with the DPR Enforcement Branch Liaison monthly to ensure inspections are conducted according to the Inspection Procedures Manual.

INSPECTIONS

Unless responding to a complaint or illness investigation, inspections will focus on applications using more toxic formulations, more problematic methods of application (air and power spraying), sensitivity of the site or surrounding areas, past compliance history, and operations that have not been previously inspected. Inspectors will record their findings in the "as found condition." All non-compliances will receive appropriate compliance or enforcement actions as required by the Enforcement Response Regulation (violation notice, warning letter, civil penalty, or referral to the district attorney, city attorney or state agencies).

Goal

Maintain an effective pesticide monitoring system to assure safe use of pesticides in all areas of San Diego County.

Deliverables

1. Conduct approximately 800 inspections with growers, pest control applicators, pesticide dealers and pest control advisors.
2. Maintain structural inspection levels, to reflect gradual urbanization and increased pesticide activity in urbanized areas. The County will conduct an estimated 200 structural inspections for Branch 1 (termite fumigation), 2 (general pest) and 3 (termite control utilizing slab treatments). Priorities will be fumigation inspections and other applications using a Category 1 (highest toxicity) pesticide.
3. Monitor applications that have historically received or may receive public complaint. In San Diego County, the Vector Control District is utilizing larvicides to reduce mosquito populations to prevent outbreaks of West Nile Virus (WNV). These applications are conducted by helicopter to standing water in residential and urban areas throughout the County. These high visibility applications have resulted in complaints. PRP staff will monitor at least 2% of all WNV applications in San Diego County to assure that applications are being conducted correctly.
4. Compliance Assistance: Utilize the Farm Worker Health Initiative (FWHI) and outreach events to update pesticide information for applicators, field workers and the general public. Provide speakers for at least 12 outreach events (CAPCA, PAPA, health fairs, etc.). Conduct five field worker training sessions utilizing bilingual staff. Conduct at least one specialized training for pesticide dealers, aimed at improving dealer compliance. Conduct four outreach meetings with property management association members to educate them on tenant notification requirements prior to pesticide applications. Submit at least four articles addressing compliance issues to professional trade journals or other publications designed for pesticide users. Include compliance information on various topics appropriate to audiences of the PRP "end-of-the-year mail-outs" to all growers with operator identification numbers, pest control businesses and operators, pest control advisors, and pesticide dealers.

Outreach regarding the new respirator regulations will be provided. As appropriate, speakers will cover the new respirator regulations at the 12 outreach events. One or more of the four articles to professional publications will include the new respirator requirements. In-house literature will be developed for distribution at grower and pest control business headquarter inspections and outreach events. Information regarding the new respirator regulations will be included in the end-of-the-year mail-outs.

5. Assign workload goals to inspectors based on area characteristics such as numbers of permits, types of permits, and number of operators. Assign inspection goals to each pesticide inspector to assure attainment of the county's strategic initiatives for a safe and livable community and protection of the environment.

Measures

Outreach to the regulated community provides a proactive method of providing information about requirements to growers, applicators, field workers, structural companies and agricultural pest control businesses. Inspections identify areas of non-compliance that need corrective action. These activities also serve as a method of obtaining feedback for County staff. The measure of success would be a community that is:

- Knowledgeable about pesticide laws and regulations;
- Aware that these laws and regulations are intended to protect the public, workers and the environment;
- Willing to report violations or complaints; and
- Informed about how to make a pesticide-related complaint.

INVESTIGATION RESPONSE AND REPORTING

Approximately 60 to 70 investigation reports are completed each fiscal year. An additional 30 to 40 "public reports" are produced documenting complaints that cannot be confirmed as pesticide-related or where no violations were found. The majority of complaint investigations relate to agricultural/urban interface or neighbor-versus-neighbor conflicts concerning pesticide use. Illness reports received from DPR are generally related to the use of antimicrobial (disinfectant) products.

Since 2001, the San Diego County Department of Agriculture/Weights and Measures has sponsored a coalition of non-profit and government agencies to improve the overall health of farm workers. The Farm Worker Health Initiative (FWHI) works on local issues of worker safety including pesticide illness reporting. Although the statewide pesticide enforcement programs reflect an overall reduction in injury and illness from pesticide applications, it is not clear whether this is due to an actual reduction in illnesses or failure to comply with reporting requirements. FWHI members continue to report that workers do not seek medical care for a variety of reasons including fear of potential retaliation, limited access to medical care and belief in cultural traditional cures. The FWHI works with local health clinics, Office of Environmental Health Hazard Assessment (OEHHA), DPR and the local public health officer to encourage reporting of illnesses. We believe that most sub-acute/chronic exposures (rashes and allergies) are not being reported. The County of San Diego, along with two other counties, has been selected by OEHHA to pilot a new web-based pesticide illness reporting system that will incorporate this

issue into the existing Morbidity and Mortality Report physicians use to notify the public health officer of communicable diseases. It is hoped that, by adding a mechanism for reporting pesticide illnesses into an existing and widely recognized system for reporting, the result will be more accurate reporting by physicians.

Goal

1. Produce timely investigative reports that meet State guidelines for submission and quality.
2. Respond to public complaints of pesticide misuse in a timely manner.
3. Investigate all complaints of pesticide exposure, whether reported to this office directly or brought to this office's attention through other means such as media reports.

Deliverables

1. Maintain timely response and submission of investigative reports. Reports will meet State guidelines for submission, or reasons why the guideline cannot be met will be documented and provided.
2. Continue to follow state guidelines for format and information, as found in the Investigative Procedures Manual. Continue to develop and utilize a referral list to other agencies for common complaints that are not within the role or jurisdiction of the County Agricultural Commissioner.
3. Continue to participate, as a pilot county, in the development of Web-based pesticide illness reporting.
4. Maintain a monthly complaint log, available to DPR staff, in compliance with enforcement letter 95-053.

Measures

Pesticide investigations are important in determining whether a pesticide use activity is in compliance with all pesticide laws and regulations, and in providing information to DPR on labeling issues, reentry intervals concerns, rates of pesticide use, etc. In order for DPR to make determinations of exposure, the content of the investigations must provide enough information for the reviewer to identify where problems may be occurring. DPR must also receive the initial report in a timely fashion. It is a measure of success that the reports are submitted in a timely manner (which results in timely response) and that the finished reports are complete, including labels, violations found, appropriate enforcement actions and exposure information. Attempting to obtain medical records releases and medical records for all illness investigations, and documenting these attempts in the report is an important step in the investigative process. Finally, it is important that the County encourages reporting and responds to all complaints received.

Enforcement Response

All non-compliances noted when conducting inspections or investigations are recorded in the “as found” condition. The inspection form with the appropriate notation serves as the violation notice. Separate violation notices are issued for Cease and Desist Orders and violations found as the result of investigations.

Under Food and Agricultural Code Section 12999.5, the Commissioner is identified as the sole issuing authority for civil penalty actions. Business and Professions Code 8617 also authorizes the Commissioner to propose civil penalties. Violations are classified according to the Food and Agricultural Code, Business and Professions Code, and Titles 3 and 16 of the California Code of Regulations.

In mid-2006, the department re-engineered its handling of civil penalty actions. By November 2007, the average time from the issuance of a Notice of Violation (NOV) to the issuance of a Notice of Proposed Action (NOPA) was reduced from 180 days to less than 60 days. The average days for all structural and agricultural NOPAs now fluctuates between 45 to 55 days. This includes complex investigations where sampling and/or multiple inspections/interviews are required.

In fiscal year 05/06, PRP proposed approximately 130 civil actions.
In fiscal year 06/07, PRP proposed approximately 114 civil actions.

Goal

Following the provisions of the Enforcement Response Regulation, mail simple NOPAs within 60 days of the violation notice. NOPAs continue to be one of the top priorities, second only to priority investigations and triage of illness investigations and complaints.

Deliverables

1. Take appropriate enforcement actions with documented consideration of the individual circumstances of each case.
2. Continue to utilize a database that provides an overall compliance history for individuals and businesses.
3. Continue to refine in-house procedures for handling enforcement actions within the resources of the department, preparing evidence packets, and identifying responsible parties.
4. NOPAs for violations categorized as “Class A” or “serious” will be sent via fax or e-mail to the DPR Enforcement Branch Liaison for review prior to being signed by the commissioner.

5. Notify the DPR Enforcement Branch Liaison in a timely manner of all ACP/SCP hearings requested.
6. Notify the DPR Enforcement Branch Liaison in a timely manner of any enforcement cases referred to agencies such as the Structural Pest Control Board for licensing action or to the city/district attorney for prosecution, etc.
7. Provide the DPR Enforcement Branch Liaison with Decision Reports within 30 days of the date the corresponding compliance action is taken. Adopt numbering system for Decision Reports if requested by DPR.

Measures

Enforcement actions are utilized by the County Agricultural Commissioner to promote compliance with pesticide laws and regulations. The Commissioner selects the appropriate level of enforcement action required to achieve regulatory compliance. The measure of success for the program is the application of these actions in a manner that improves the compliance level of the individual or company to which they are applied and the improved overall compliance with individual law or regulatory sections.

The database will be utilized to analyze the compliance/non-compliance found during inspections. The measure of success for the database is improved identification of non-compliance by individuals, businesses, and/or law or regulation section number.

Work Plan Duration

San Diego County will revise its work plan biennially.